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# CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE, IMPUNITY

Written statement*/ submitted by Human Rights Advocates, Inc.,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[25 January 2001]

*/ This written statement is issued, unedited, as received from the submitting non-governmental organization(s).

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**Views of Human Rights Advocates regarding the appointment of an Independent Expert on Impunity**

1. The Secretary General has asked for comments from non-governmental organizations (NGOs) on the United Nations (U.N.) Commission on Human Rights Sub-commission on the Promotion and Protection of Human Rights suggestion to appoint an Independent Expert on Impunity. (E/CN.4/RES/2000/68) In response, Human Rights Advocates, an NGO with Category II Consultative Status with ECOSOC, submits the following comments. Human Rights Advocates recommends the appointment of an Independent Expert as a step consistent with the adoption by the U.N. of the principles for the protection and promotion of human rights through action to combat impunity.

2. In 1989, the Sub-Commission on Prevention of Discrimination and Protection of Minorities entrusted an expert to study the right to restitution, compensation and rehabilitation for victims of human rights and fundamental freedoms. (E/CN.4/Sub.2/1993/8) In 1998, the Commission on Human Rights (Commission) appointed M. Cherif Bassiouni as an independent expert to revise the basic principles. Mr. Bassiouni completed his first report (E/CN.4/1999/65) and circulated the draft principles to governments, intergovernmental organizations (IGOs) and NGOs for comment. NGOs, including Human Rights Advocates, supported the principles and actively contributed feedback. Mr. Bassiouni then submitted his final report entitled *Civil And Political Rights, Including The Questions Of: Independence Of The Judiciary, Administration Of Justice, Impunity, The Right To Restitution, Compensation And Rehabilitation For Victims Of Gross Violations Of Human Rights And Fundamental Freedoms*. (submitted in accordance with Commission resolution 1999/33 U.N. Commission On Human Rights 56th session Item 11(d) of the provisional agenda, at E/CN.4/2000/62, 18 January 2000).

3. The Commission also undertook separate studies on impunity. In 1991, the Sub Commission on Prevention of Discrimination and Protection of Minorities requested Mr. Louis Joinet to study the impunity of perpetrators of human rights violations (decision 1991/110). In 1994, the Commission split the study in two charging Mr. Joinet with aspects of civil and political rights (decision 1994/34). In 1997 Mr. Joinet submitted his final report entitled *The Administration Of Justice And The Human Rights Of Detainees, Question Of The Impunity Of Perpetrators Of Human Rights Violations (Civil And Political)* (pursuant to Sub Commission decision 1996/119, E/CN.4/Sub.2/1997/20/Rev.1.) The report recommends adoption by the U.N. General Assembly of principles for protection and promotion of human rights through action to combat impunity. The Sub-Commission circulated this set of principles to governments, IGOS and NGOs. *Impunity Report of the Secretary-General Promotion And Protection Of Human Rights,* summarizes the replies. (U.N. Commission on Human Rights, 56th session Item 17 of the provisional agenda at E/CN.4/2000/90, 23 December 1999). NGOs, IGOs and states remain actively committed to the principles to combat impunity. The U.N. Commission, recognizing the role of NGOs, has now requested their advice regarding the appointment of an Independent Expert on Impunity.

4. Human Rights Advocates has supported the work of the special rapporteurs on impunity and on reparations for victims from the beginning, and views the appointment of an Independent Expert as the essential next step in implementing and making effective the results of this prior work.

5. There are existing experts covering substantive rights at issue, like torture. Yet, there is no human rights mechanism focused specifically on monitoring, advising and further developing guidelines regarding impunity for use by international and regional organizations, states, other experts and NGOs which increasingly have to grapple with these issues.

6. The goal of an independent expert is to help combat impunity for human rights violations, especially those that constitute international crimes. This involves monitoring and reporting annually to the Human Rights Commission on what states and international organizations are doing in this area. Therefore, the Independent Expert on Impunity must be able to seek and receive information regarding situations involving impunity for serious violations of human rights. The independent expert should focus on situations of widespread or systematic impunity.

7. The specific tasks for an Independent Expert on Impunity include acting as an:

(a) Expert for U.N. decision-makers, NGOs and IGOs providing assistance in the following areas: amnesty; political asylum for those accused of human rights violations; reparations and programs for victims and survivors; reforming security forces; and arrangements for inquiry commissions. This expert could disseminate information on impunity issues as well as provide training in human rights and anti-impunity issues for U.N. personnel involved in negotiating peace agreements, transitional arrangements and the like. In the past, U.N. officials provided inconsistent and contradictory responses to proposals to grant amnesty or to prosecute offenders. Examples include Sierra Leone, where U.N. negotiators approved a failed amnesty for those who had committed atrocities, against the principles enunciated by its own human rights bodies. The U.N. has taken similarly unfortunate positions in Haiti, Cambodia and elsewhere. In Haiti, part of the agreement to put Jean-Bertrand Aristide back in power was amnesty for the past human rights violations of the military. The agreement failed and the result was invasion to remove the military regime. In Cambodia, the October 1991 peace agreement attempted to bring the Khmer Rouge into the disarmament process in an effort to control them. It ignored past human rights violations and failed to address critical issues, such as whether the party members could hold political office. The international ambivalence to bring the DK leaders to justice strengthened the Khmer Rouge's sense of impunity, and led to a longer conflict. On the other hand, when international negotiators have transmitted accurate and appropriate information about international law, it has had positive impact, as the limits on amnesties in the Guatemalan National Reconciliation Law of 1996 makes clear. The independent expert can not only transmit information but also ensure consistent non-contradictory responses by persons involved in international peace-making or mediation.

(b) Expert for states, providing information, guidelines, principles and models for addressing issues such as amnesty, prosecutions, reparations, political asylum or extradition for perpetrators, commemoration, and inquiry and truth commissions. This expert could aid in ensuring that domestic law is consistent with international legal obligations by providing states with information on international norms of protection and models of judicial and administrative procedures.

The expert could assist states in fashioning inquiry and truth and reconciliation systems; developing standards for drafting amnesty provisions which do not violate international law; designing victims's remedies; or advising states seeking to implement transitional measures. The expert may assist extra-judicial commissions of inquiry in developing adequate infrastructure, funding, personnel, documentation, evidence-gathering and with making informed choices regarding safeguards for victims and witnesses. Further, an independent expert could make available to domestic courts, still unfamiliar with much of the recent international law on international crimes, investigations and amnesties, coherent guidelines and principles.

(c) Expert to monitor situations where current violations have decreased substantially, but impunity for past crimes continues to be a major problem. This requires looking at state reports, practices and procedures, visiting those states concerned with impunity for past crimes, and reporting to the Commission and other human rights bodies if requested.

Currently, when states are no longer considered gross violators of human rights, scrutiny by the Commission ceases. Yet where problems of impunity fester, states will often revert to gross violations either to stem continuing unrest or because of unresolved ethnic, religious or political tensions that are exacerbated by the felt lack of justice. An independent expert would assist early warning mechanisms for conflict prevention by assessing situations where problems of impunity presage future problems. The independent expert could provide both assessments and expert services.

(d) Expert coordinating with other existing working groups and experts in disappearances, torture, arbitrary executions, and violence against women to strengthen the anti-impunity work of these actors. An independent expert could serve as a focal point for bringing an anti-impunity perspective to the work of other groups and experts, and as a resource for other international institutions to the extent their work involves impunity related issues, for instance the international lending institutions work in ethnically torn societies or in strengthening the rule of law.

8. Overall an independent expert is necessary to assist international organizations and states with principles, guidelines and recommendations regarding anti-impunity measures. An independent expert would further be able to monitor situations where human rights violations have decreased and the U.N. is not directly involved, and provide recommendations, reporting and assistance in ensuring that impunity for past crimes is dealt with effectively. The role of the

independent expert is unique, then, as his or her mandate involves assisting with accountability, justice and legal principles in areas where human rights violations are occurring and in those where, although violations are on the decline, impunity measures are still a problem.

9. In addition to appointing an independent expert, the Commission should continue to widely disseminate the principles on impunity outlined in the *Impunity Report of the Secretary-General Promotion And Protection Of Human Rights*, and the principles outlined in *The Right To Restitution, Compensation And Rehabilitation For Victims Of Gross Violations Of Human Rights And Fundamental Freedoms*. These should be circulated to Justice Ministries, Presidential offices and organizations of civil society, so that they become more widely known by national and local decision-makers.

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